

west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0495
Fax: (304) 926-0463

Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
www.dep.wv.gov

**ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11
AND THE
GROUNDWATER PROTECTION ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 12**

TO: Etowah River Terminal, LLC.
Attn: John Hutchinson, Terminal Manager
P.O. Box 713
Charleston, WV 25323

DATE: January 10, 2014

ORDER NO.: 8027

INTRODUCTION

The following findings are made and Order issued to Etowah River Terminal, LLC pursuant to the authority vested in the Director of the Division of Water and Waste Management under Chapter 22, Article 11, Section 1 et seq. and Chapter 22, Article 12, Section 1 et seq. of the Code of West Virginia.

FINDINGS OF FACT

In support of this Order, the Director hereby finds the following:

1. Etowah River Terminal, LLC operates a bulk storage distribution center located near Charleston, Kanawha County, West Virginia. Etowah River Terminal, LLC was reissued permit coverage under WV/NPDES General Water Pollution Control Permit No. WV0111457, Registration No. WVG610920 on November 17, 2009.
2. On January 9, 2014, West Virginia Department of Environmental Protection (WVDEP) personnel received a complaint concerning an odor at / near Ettowah River Terminal, LLC. After investigation, the following was observed and documented:
 - a. Free product was observed in secondary containment units surrounding above ground storage tanks containing a chemical described as 4-Methylcyclohexne Methanol. It

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- was also observed that this material had escaped the secondary containment unit and had entered the Elk River. Failure to maintain adequate secondary containment for above ground storage tanks is a violation of 47 CSR 58, Section 4.8.a.
- b. It was determined that the intake for the local public water supply is located approximately 1.5 miles downstream of the discharge, and has been impacted.
 - c. The release of this spilled material has caused conditions not allowable in the Elk River by creating odors in the vicinity of state waters, by requiring an unreasonable degree of treatment for the production of potable water, and by creating a sheen on the surface of the water, a violation of 47 CSR 2, Section 3.
 - d. Ettowah River Terminal, LLC has failed to take any and all measures necessary to contain the spill and render it harmless, a violation of 47 CSR 11, Section 2.5.
3. At 12:05 p.m. on January 9, 2014, Bob Reynolds with Freedom Industries reported the spill to the Emergency Response Spill Hotline. Mr. Reynolds indicated that the facility discovered a hole in the tank; as well as, the secondary containment unit was containing the spilled material.

ORDER FOR COMPLIANCE

And now, this day of January 10, 2014, Ettowah River Terminal is hereby ORDERED by the Director as follows:

1. Ettowah River Terminal, LLC. shall immediately take measures to initiate compliance with all terms and conditions of its permit and pertinent laws and rules.
2. Ettowah River Terminal, LLC. shall immediately **Cease and Desist** any further receipt of material to be stored within the area of the faulty secondary containment.
3. Ettowah River Terminal, LLC shall immediately take all necessary measures to contain, recover and remediate the material that has escaped the breached above ground storage tank and the secondary containment structure; which shall at a minimum include the installation of interceptor trenches adjacent to the Elk River, and the installation and maintenance of booms and absorbents in affected waterways.
4. Ettowah River Terminal, LLC. shall immediately conduct an integrity test of all above ground storage tanks and secondary containment structures for the entire facility.
5. Prior to resuming receipt of material to be stored, Ettowah River Terminal, LLC. must provide a report for approval which documents that the integrity of all storage and containment structures are sound.

OTHER PROVISIONS

1. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving Ettowah River Terminal, LLC of the obligation to comply with any

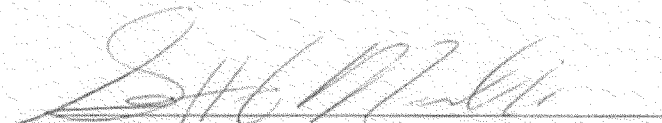
applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject Ettowah River Terminal, LLC to additional enforcement action in accordance with the applicable law.

2. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
3. This Order is binding on Ettowah River Terminal, LLC, its successors and assigns.
4. This Order shall terminate upon Ettowah River Terminal, LLC's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

RIGHT OF APPEAL

Notice is hereby given of your right to appeal the terms and conditions of this Order which you are aggrieved to the Environmental Quality Board by filing a NOTICE of APPEAL on the form prescribed by such Board, in accordance with the provisions of Chapter 22, Article 11, Section 21 and/or Chapter 22, Article 12, Section 11 of the Code of West Virginia within thirty (30) days after receipt of this Order.

This Order shall become effective upon receipt.



Scott G. Mandirola, Director
Division of Water and Waste Management

revised March 2013



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0495
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Earl Ray Tomblin, Governor
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**ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
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AND THE
GROUNDWATER PROTECTION ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 12**

TO: Freedom Industries, Inc.
Attn: Gary Southern, President
P.O. Box 713
Charleston, WV 25323

DATE: January 10, 2014

ORDER NO.: 8028

INTRODUCTION

The following findings are made and Order issued to Freedom Industries, Inc. pursuant to the authority vested in the Director of the Division of Water and Waste Management under Chapter 22, Article 11, Section 1 et seq. and Chapter 22, Article 12, Section 1 et seq. of the Code of West Virginia.

FINDINGS OF FACT

In support of this Order, the Director hereby finds the following:

1. Freedom Industries, Inc. operates a bulk storage distribution center located near Charleston, Kanawha County, West Virginia. The site was formerly operated by Ettowah River Terminal, LLC under WV/NPDES General Water Pollution Control Permit No. WV0111457, Registration No. WVG610920.
2. Freedom Industries, Inc. purchased the facility from Ettowah River Terminal, LLC on December 9, 2013.
3. On January 9, 2014, West Virginia Department of Environmental Protection (WVDEP) personnel received a complaint concerning an odor at / near the Freedom Industries, Inc. site. After investigation, the following was observed and documented:

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- a. Free product was observed in secondary containment units surrounding above ground storage tanks containing a chemical described as 4-Methylcyclohexene Methanol (MCHM). It was also observed that this material had escaped the secondary containment unit and had entered the Elk River. Failure to maintain adequate secondary containment for above ground storage tanks is a violation of 47 CSR 58, Section 4.8.a.
 - b. It was determined that the intake for the local public water supply is located approximately 1.5 miles downstream of the discharge, and has been impacted.
 - c. The release of this spilled material has caused conditions not allowable in the Elk River by creating odors in the vicinity of state waters, by requiring an unreasonable degree of treatment for the production of potable water, and by creating a sheen on the surface of the water, a violation of 47 CSR 2, Section 3.
 - d. Freedom Industries, Inc. has failed to take any and all measures necessary to contain the spill and render it harmless, a violation of 47 CSR 11, Section 2.5.
4. At 12:05 p.m. on January 9, 2014, Bob Reynolds with Freedom Industries, Inc. reported the spill to the Emergency Response Spill Hotline. Mr. Reynolds indicated that the facility discovered a hole in the tank; as well as, the secondary containment unit was containing the spilled material.
5. On January 10, 2014, WVDEP personnel continued its investigation of the release of MCHM from Freedom Industries, Inc.'s facility into the Elk River. During the course of the investigation, the following was observed and documented:
 - a. In addition to the three (3) above ground storage tanks containing MCHM, eleven (11) additional tanks were reported as containing other materials with the potential to cause harm to human health and the environment. These tanks are located within the same failed secondary containment structure in which the MCHM leaked. The other materials being stored in the additional tanks include Calcium Chloride and Glycerin.
 - b. Freedom Industries, Inc. has removed most of the MCHM from the above ground storage tanks and staged it off-site at Poca Blending, LLC in four large Baker tanks. Approximately twenty four hundred gallons of MCHM tank heels remain onsite to be recovered.
6. 47 CSR 58, Section 4.1. states, "Where the evaluation of an existing facility reveals that contamination is occurring, a schedule of compliance must be submitted by the facility or activity and approved by the director whereby the facility or activity must retrofit or improve or discontinue existing systems, activities or procedures to make them, to the satisfaction of the director, protective of groundwater."

ORDER FOR COMPLIANCE

And now, this day of January 10, 2014, Freedom Industries, Inc. is hereby ORDERED by the Director as follows:

1. Freedom Industries, Inc. shall immediately take measures to initiate compliance with all pertinent laws and rules.

2. All requirements of Order No. 8027 remain in full force and effect.
3. Within twenty-four (24) hours, Freedom Industries, Inc. shall begin removal of all material from all above ground storage tanks and store the material in an off-site area which provides adequate secondary containment.
4. Within twenty-four (24) hours, Freedom Industries, Inc. shall submit for approval, an appropriate plan of corrective action, which at a minimum shall include the following:
 - a. An outline of all actions to be taken to immediately remove and appropriately store materials from the site.
 - b. A detailed plan to appropriately implement a remediation of all contaminated soil and/or groundwater.
 - c. An outline of how all contaminated material and/or unusable product will be properly disposed.
 - d. A plan and schedule for the ultimate disposition of the products stored in these tanks including the MHCM currently stored at the POCA Blending facility.

The plan of corrective action shall be submitted to the onsite WVDEP Inspector.

A copy of this plan shall be submitted to:

**WVDEP Environmental Inspector Supervisor
SW Regional Environmental Enforcement Office
PO Box 662
Teays, WV 25569**

A copy of this plan shall also be submitted to:

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WVDEP
601 57th Street SE
Charleston, WV 25304**

Upon approval, the plan of corrective action and schedule shall be incorporated into and become part of this Order, as if fully set forth herein. Failure to submit an approvable plan of corrective action and schedule or failure to adhere to the approved schedule is a violation of this Order.

OTHER PROVISIONS


1. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving Freedom Industries, Inc. of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject Freedom Industries, Inc. to additional enforcement action in accordance with the applicable law.

2. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
3. This Order is binding on Freedom Industries, Inc., its successors and assigns.
4. This Order shall terminate upon Freedom Industries, Inc.'s notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

RIGHT OF APPEAL

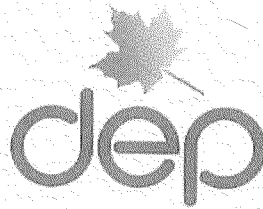
Notice is hereby given of your right to appeal the terms and conditions of this Order which you are aggrieved to the Environmental Quality Board by filing a NOTICE of APPEAL on the form prescribed by such Board, in accordance with the provisions of Chapter 22, Article 11, Section 21 and/or Chapter 22, Article 12, Section 11 of the Code of West Virginia within thirty (30) days after receipt of this Order.

This Order shall become effective upon receipt.



Scott G. Mandirola, Director
Division of Water and Waste Management

revised March 2013



west virginia department of environmental protection

Environmental Enforcement
601 57th Street, SE
Charleston, WV 25304
Telephone: 304-926-0470 Fax Number: 304-926-0488

Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
www.dep.wv.gov

January 14, 2013

Freedom Industries, Inc.
Attn: Gary Southern, President
P.O. Box 712
Charleston, WV 25323

CERTIFIED RETURN RECEIPT REQUESTED

RE: Amendment to Order No. 8028, Response to Plan of Corrective Action

Dear Mr. Southern:

The West Virginia Department of Environmental Protection (WVDEP) has received Freedom Industries, Inc.'s initial response to Order No. 8028 (attached), dated January 11, 2014. After review of the response, and consultation with WVDEP personnel that have been providing oversight for this incident, the agency has determined that Freedom Industries, Inc.'s focus should be continued containment and remediation of the spilled MCHM material, and not necessarily the immediate removal of all non-MCHM material from the remaining above ground storage tanks as required by Item #3 of the Order for Compliance Section of Order No. 8028.

However, the agency finds the proposed date of March 30, 2014 for removal of the non-MCHM material from the additional above ground storage tanks unacceptable. Freedom Industries, Inc. should consider additional alternatives for removal of non-MCHM material from the site including, but not limited to, off-loading and storage on U.S. Coast Guard approved vessels after obtaining the appropriate authorization for this activity.

After consideration of the circumstances surrounding the current status of the site, and on behalf of the Director of the Division of Water and Waste Management, WVDEP hereby amends Paragraph three (3) of the Order for Compliance Section of Order No. 8028 as follows:

3. As soon as possible, but no later than fourteen (14) days from the effective date of the Order, Freedom Industries shall begin removal of all material from all above ground storage tanks and store the material in an off-site area which provides adequate secondary containment in accordance with 47 CSR 58, Section 4.8.a.

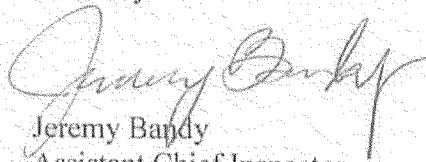
Please replace page 3 of your copy of Order No. 8028, with the attached amended Page 3 as described above.

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Be advised that this correspondence does not constitute approval of Freedom Industries, Inc.'s proposed plan of corrective action. WVDEP personnel will further evaluate the proposed plan and respond appropriately.

Should you have any questions regarding this matter, please do not hesitate to contact me at (304) 926-0470.

Sincerely


Jeremy Bandy
Assistant Chief Inspector

Attachments

cc: Yogesh Patel, Asst. Director, DWWM-Permits (via email)
Joseph M. Hickman, Asst. Chief Inspector (via email)
Cindy Musser, Env. Inspector Supervisor (via email)
Shyrel Moellendick, EE (via email)

2. All requirements of Order No. 8027 remain in full force and effect.
3. As soon as possible, but no later than fourteen (14) days from the effective date of the Order, Freedom Industries shall begin removal of all material from all above ground storage tanks and store the material in an off-site area which provides adequate secondary containment in accordance with 47 CSR 58, Section 4.8.a.
4. Within twenty-four (24) hours, Freedom Industries, Inc. shall submit for approval, an appropriate plan of corrective action, which at a minimum shall include the following:
 - a. An outline of all actions to be taken to immediately remove and appropriately store materials from the site.
 - b. A detailed plan to appropriately implement a remediation of all contaminated soil and/or groundwater.
 - c. An outline of how all contaminated material and/or unusable product will be properly disposed.
 - d. A plan and schedule for the ultimate disposition of the products stored in these tanks including the MHCM currently stored at the POCA Blending facility.

The plan of corrective action shall be submitted to the onsite WVDEP Inspector.

A copy of this plan shall be submitted to:

**WVDEP Environmental Inspector Supervisor
SW Regional Environmental Enforcement Office
PO Box 662
Teays, WV 25569**

A copy of this plan shall also be submitted to:

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WVDEP
601 57th Street SE
Charleston, WV 25304**

Upon approval, the plan of corrective action and schedule shall be incorporated into and become part of this Order, as if fully set forth herein. Failure to submit an approvable plan of corrective action and schedule or failure to adhere to the approved schedule is a violation of this Order.

OTHER PROVISIONS

1. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving Freedom Industries, Inc. of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject Freedom Industries, Inc. to additional enforcement action in accordance with the applicable law.



west virginia department of environmental protection

Environmental Enforcement
254 Industrial Drive
Oak Hill, WV 25901
(304) 465-1919

Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
www.dep.wv.gov

January 15, 2014

Freedom Industries, Inc.
Attn: Gary Southern, President
P.O. Box 713
Charleston, WV 25323

RE: Plan of Corrective Action (Order 8028)

Dear Mr. Southern:

The West Virginia Department of Environmental Protection (WVDEP) has received your Plan of Corrective Action (POCA) and Schedule of Compliance dated January 11, 2014 (attached) as required by paragraph # 4 under the Order for Compliance section for Order No 8028.

WVDEP has determined that the proposed Plan of Corrective Action is not acceptable and has not been approved because of the deficiencies noted below:

1. **Item #4, Page 2 of Freedom's response** – What methodology was used to determine the quantity of MCHM released from the leaking above ground storage tank (AST)? Please provide all documentation, including shipping and receiving records.
2. **Item #5, Page 2 of Freedom's response** – Which sites were determined to be appropriate for disposal of MCHM contaminated material? In what manner will this material be disposed?
3. **Item #6, Page 2 of Freedom's response** – Recent observations by WVDEP personnel revealed that the configuration of the collection trench is inadequate to collect MCHM contaminated discharges from the containment area.
4. **Item #8, Page 2 of Freedom's response** – Does Freedom have protocol in place that outlines proper documentation of the referenced 24 – hour surveillance program for all tanks on the site? Please provide a detailed description of inspection practices and regular intervals.
5. **Item #9, Pages 2-3 of Freedom's response** – See attached NOV.
6. **Item #10, Page 3 of Freedom's response** – Recent observations by WVDEP personnel indicated that rolloffs containing MCHM contaminated materials are actively leaking onto the ground and ultimately discharging through Outlet #001.

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7. **Removal of non-MCHM material from additional ASTs on the site, Pages 3-5 of Freedom's Response** – As indicated, in WVDEP's Amendment to Order No. 8028 which was received by Freedom on January 14, 2014, the agency finds that removal of all non-MCHM material from Freedom Industries, Inc.'s site by March 30, 2014 to be unacceptable. While the agency recognizes that Freedom's primary focus should be on proper containment and remediation of the spilled MCHM material, Freedom must consider any and all actions necessary to properly drain the remaining AST's on site, and properly transport and store in areas where adequate secondary containment structures have been provided. The removal and relocation of the non-MCHM material must be accomplished as quickly as possible. Freedom has indicated that it does not have additional storage capacity off site to accommodate the non-MCHM material. In response, the agency suggests that Freedom evaluate all possibilities, including but not limited to, materials being shipped back to the vendor and attempting to locate potential storage sites other than its Poca Blending facility. Freedom has also indicated that the remaining AST's onsite are adequate to store the non-MCHM material due to these tanks being double bottom tanks which were tested for integrity in 2008 and 2009. In response, WVDEP requests that Freedom provide copies associated with the aforementioned integrity test in its revised plan of corrective action (POCA). Do these double bottom tanks have interstitial space that may be monitored as an indicator for leak detection?
8. **Freedom Industries Inc. has failed to provide a detailed plan to appropriately implement a remediation of all contaminated soil and/or groundwater as required by paragraph 4.a. of the Order for Compliance Section of Order No. 8028.**

WVDEP personnel have conducted several site visits of the Freedom Industries, Inc.'s Poca Blending facility over the past several days. During the course of these visits, WVDEP inspection staff have observed and documented the lack of adequate secondary containment for tanks containing MCHM and MCHM contaminated liquids from Freedom Industries, Inc.'s Etowah River Terminal facility. In addition, WVDEP personnel have determined that Freedom Industries, Inc. and / or its representatives or contractors have been conducting an unpermitted waste processing operation at its Poca Blending facility for MCHM contaminated liquids being stored at the site. These activities constitute violations of Order No. 8028 and WV Code 22-11-1 et seq. Please see the attached Notice of Violation.

By 4:00 pm on January 16, 2014, submit a revised Plan of Corrective Action that addresses the deficiencies / questions noted above. The revised plan of corrective action shall be submitted to the onsite WVDEP Inspector. A copy of this plan shall be submitted to:

**WVDEP Environmental Inspector Supervisor
SW Regional Environmental Enforcement Office
PO Box 662
Teays, WV 25569**

A copy of this plan shall also be submitted to:

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WVDEP
601 57th Street SE
Charleston, WV 25304**

Upon approval, the revised plan of corrective action and schedule shall be incorporated into and become part of Order No. 8028, as if fully set forth therein. Failure to submit an approvable plan of corrective action and schedule or failure to adhere to the approved schedule is a violation of Order No. 8028.

Sincerely,

A handwritten signature in dark ink, appearing to read 'S. Mandirola', is written over the word 'Sincerely,'.

Scott G. Mandirola, Director
Division of Water and Waste Management

CC: Yogesh Patel, Asst. Director, DWWM-Permits (via e-mail)
Joseph M. Hickman, Asst. Chief Inspector (via e-mail)
Cynthia Musser, Env. Inspector Supervisor, EE - SW Region (via e-mail)
Shyrel Moellendick, EE (via e-mail)



January 11, 2014

Scott Mandirola
Division of Water and Waste Management
601 57th Street Southeast
Charleston, West Virginia 25304

Re: Order No. 8028

Dear Mr. Mandirola:

This letter is an initial response to Order No. 8028 issued by the Division of Water and Waste Management on January 10, 2014. This Order required Freedom Industries, Inc. ("Freedom") to take certain actions and submit a plan of corrective action. This letter outlines the steps Freedom has already taken and describes the steps Freedom has planned in both the short and long terms to address this matter.

Investigation and Remediation of MCHM Release.

Freedom is actively investigating the cause of the release on January 9, 2014, and is performing remediation at the Site. These efforts have been ongoing since the release occurred. Specifically, Freedom has done the following:

1. All 4-methylcyclohexane methanol (MCHM) stored in tanks at Freedom's Charleston facility (the "Site") has been removed and transported to the Poca Blending facility.
2. Environmental remediation professionals have been engaged to continually operate vacuum trucks on the Site in order to remove residual MCHM in the soil. These trucks are still in operation.
3. Environmental remediation professionals have been engaged to deploy booms along the secondary containment system at the Site and in the Elk River to absorb any residual MCHM. The environmental remediation professionals have also deployed a skimmer to remove any MCHM on the surface of the Elk River.



4. Freedom has calculated the total volume of MCHM transported from tanks on the Site to the Poca Blending facility. Freedom estimates that the maximum amount of MCHM that could have leaked from Tank 396 to be no more than 7,500 gallons. Some of that 7,500 gallons of MCHM has been recovered by remediation efforts. Some MCHM remains in the soil, to which additional remediation efforts are being directed. Some MCHM remains in the Elk River. While each of these specific amounts are not presently amenable to calculation, only a fraction of the 7,500 gallons was discharged into the Elk River.

5. Freedom and its environmental professionals have identified and continue to identify appropriate, potential sites for disposal of the MCHM-contaminated water and other materials collected from the Site. Freedom is currently determining which of several sites represents the best option for proper disposal of these materials.

6. A collection trench has been installed below the Site to prevent discharge of rainwater and other potentially affected materials into the Elk River. Vacuum trucks are presently removing all material from this trench.

7. All shipments of material into the Site have ceased. No additional chemicals have been brought onto the Site since the release occurred and none are contemplated while Freedom's response to this event is ongoing.

8. Freedom has initiated a 24-hour surveillance program for all tanks on the Site which entails regular visual inspection at regular intervals. Freedom will also maintain a vacuum system on the Site until all material has been removed from all tanks.

9. All MCHM from the Site has been relocated to the Poca Blending facility. Though the Poca Blending facility does not have secondary containment capabilities, Freedom is actively pursuing the installation of an appropriate secondary



containment system for the Poca Blending facility and will provide regular updates to the West Virginia Department of Environmental Protection on the progress of these efforts.

10. A large roll-off container has already been moved onto the Site and additional containers will be brought to the Site as required. Environmental remediation professionals on scene are determining what material, and in what volumes, should be removed from the Site to ensure full remediation and prevent additional contamination. In conjunction with these environmental remediation professionals, Freedom is evaluating options for approved disposal of these contaminated materials.

Removal of non-MCHM material.

Order No. 8028 requires that Freedom begin removal of all non-MCHM material from all above ground storage tanks at the Site and store the material in an off-site area which provides adequate secondary containment.

1. All shipments of material into the Site have ceased. No additional chemicals have been brought onto the Site since the release occurred and none are contemplated while Freedom's response to this event is ongoing. Freedom has an on-site storage capacity for approximately 4.3 million gallons of material. As of January 11, 2014, approximately 1.3 million gallons of non-MCHM material is still stored on the Site. Though the total volume of material currently stored at the Site is significantly less than the total storage capacity, the availability of off-site storage and the Site's loadout capacity impose significant limitations on Freedom's ability to remove all non-MCHM material from the Site expeditiously.

2. Distribution of materials from Freedom's facilities can only be achieved by truck. There is no rail access to the Site, and barge access is only available for offloading of material from barges to the Site; barges cannot be loaded to remove material from the Site. Trucks used to transport material from the Site can be loaded at a maximum rate of no more than two trucks per hour. This limitation exists because Freedom has only two pumps at the Site, and the configuration of these pumps is such that one pump is used to move material into a hopper, and the second pump is



then used to load the material from the hopper into the truck. This configuration allows no more than two trucks to be loaded at a time. Trucks must be loaded using the hopper in order to weigh each truck for compliance with Department of Transportation rules.

3. Even if Freedom had the capability to load trucks at a faster rate, no storage source suitable for complete removal of all material is available for relocation of all the non-MCHM material stored on the Site. Freedom has no other off-site storage capacity. Its Poca Blending facility is essentially at its maximum safe capacity. Poca Blending has approximately 85 tanks of various sizes and constructions, including three 34,000 gallon tanks, all of which are at full capacity now. Poca Blending cannot accept additional material from the Site.

4. Freedom estimates that all material would be removed from the Site by no later than March 30, 2014. During the removal process, volumes in tanks at the Site are expected to vary. This process will allow Freedom to properly remove all liquid from the bulk storage tanks on the Site.

5. Non-MCHM materials on the Site include lignosulfonate and various formulations of glycerin and calcium chloride. We note that all large-capacity tanks on the Site are double-bottom tanks and, with the exception of the lignosulfonate tank, all have been inspected for structural integrity as recently as 2008 and 2009.

Freedom believes that a series of actions including regular visual observations, daily inventory reconciliation, and other inspections can achieve proper protection of the environment. Furthermore, a substantial array of remediation equipment and personnel have already been mobilized and are on-Site.

We are prepared to provide additional documentation relevant to the issues raised in this initial response.

This initial response represents Freedom's good faith effort to respond to Order No. 8028 within the 24-hour period prescribed therein. Naturally, Freedom's

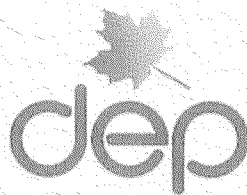


current focus is on the MCHM remediation effort. Freedom's evaluation of and response to the issues raised in Order No. 8028 are ongoing and Freedom anticipates supplementing this initial response orally, in writing, or both. Freedom would welcome the opportunity to confer and consult with appropriate WVDEP representatives in an effort to address these matters within a reasonable time and in a manner deemed acceptable to WVDEP. Freedom shares the objective of removing all material from storage tanks on the Site and evaluating the integrity of all its facilities before resuming operations thereafter.

Very Truly Yours,

Gary Southern, President
Freedom Industries, Inc.

cc WV DEP Environmental Inspector Supervisor
Southwest Regional Environmental Enforcement Office
Chief Inspector, Environmental Enforcement



west virginia department of environmental protection

Environmental Enforcement
P. O. Box 662
Teays, WV 25569
Telephone: (304)757-1693
Fax: (304)757-3873

Earl Ray Tomblin, Governor
Randy Huffman, Cabinet Secretary
www.wvdep.org

January 15, 2014

Freedom Industries, Inc.
Attn: Gary Southern, President
P.O. Box 713
Charleston, WV 25323

NOTICE OF VIOLATION

RE: NOV #I14-20-001-JWB

Dear Mr. Southern:

On January 15, 2014, West Virginia Department of Environmental Protection (WVDEP) personnel conducted a site investigation at the Freedom Industries Inc.'s Poca Blending Facility. During the course of this investigation, the following violations were observed and documented:

1. Tanks containing MCHM and MCHM contaminated liquids from this site, currently situated at Freedom Industries, Inc.'s Poca Blending facility have not been provided with adequate secondary containment, a violation of paragraph 3 of the Order for Compliance Section of Order No. 8028 and WV Code 22-11-1 et seq.
2. Freedom Industries personnel and/or its contractors have placed into operation a processing facility for the treatment of MCHM contaminated liquids at its Poca Blending facility. Freedom Industries, Inc. has not submitted a plan for WVDEP approval concerning the remediation of the contaminated soil/waste from this site, a violation of paragraph 4 of the Order for Compliance Section of Order No. 8028 and WV Code 22-11-1 et seq.

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In order to address these violations, you are requested to respond, in writing by 4:00 pm on January 16, 2014. This response should include remedial measures that will fully abate the above-mentioned violation, and shall be submitted to the on-site WVDEP Environmental Enforcement Inspector on duty. Be advised that violation(s) of your WV/NPDES Permit, WV Legislative Rules, WV Code, and/or an Order issued under the authority of the Director of Division of Water and Waste Management may result in enforcement action(s) being initiated by WVDEP.

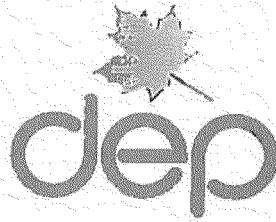
Respectfully,



Scott G. Mandirola, Director
Division of Water and Waste Management

cc: Yogesh Patel, Assistant Director, DWWM/Permits (via email)
Joseph M. Hickman, Assistant Chief Inspector, EE/WW (via e-mail)
Cynthia Musser, Environmental Inspector Supervisor, EE/WW (via e-mail)

Revised 04/2013



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street
Charleston, WV 25304
(304) 926-0495

Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
www.dep.wv.gov

January 17, 2014

Freedom Industries, Inc.
Attn: Gary Southern, President
P.O. Box 713
Charleston, WV 25323

RE: Plan of Corrective Action (Order 8028)

Dear Mr. Southern:

The West Virginia Department of Environmental Protection (WVDEP) has received your revised Plan of Corrective Action and Schedule of Compliance dated January 16, 2014 (attached) as requested by WVDEP correspondence dated January 15, 2014. The agency acknowledges Freedom Industries, Inc.'s attempts to provide a Plan of Corrective Action to fulfill the terms and conditions of Order no. 8028. The WVDEP has determined that the revised Plan of Corrective Action is not acceptable due to the following reasons:

1. Freedom Industries, Inc. has failed to comply with Paragraph 4 of the Order for Compliance Section of Order No. 8028 which requires Freedom Industries, Inc. to submit a plan of corrective action, which at a minimum shall include the following:
 - a. An outline of all actions to be taken to immediately remove and appropriately store materials from the site.
 - b. A detailed plan to appropriately implement a remediation of all contaminated soil and/or groundwater.
 - c. An outline of how all contaminated material and/or unusable product will be properly disposed.
 - d. A plan and schedule for the ultimate disposition of the products stored in these tanks including the MHCM currently stored at the POCA Blending facility.
2. Although Freedom Industries, Inc. submitted proposed Plans of Corrective Action on January 11, 2014 and January 16, 2014 in an attempt to fulfill the aforementioned requirement of Order No. 8028, the information that has been provided does not address the requirement.

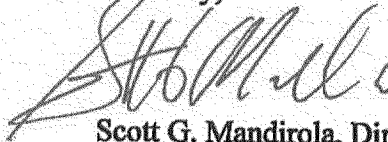
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Be advised that each day that Freedom Industries, Inc. fails to fulfill the requirements of Order No. 8028 constitutes a violation of the Order and WV Code 22-11-1 et seq.

Regarding paragraph No. 2 of Freedom Industries, Inc.'s January 16, 2014 revised Plan of Corrective Action, the process of air based separation of MCHM contaminated liquid that is staged at Freedom Industries, Inc.'s Poca Blending facility is acceptable pending approval from WVDEP's Division of Air Quality.

Due to the unsuccessful attempts by Freedom Industries, Inc. to provide WVDEP with an appropriate Plan of Corrective Action as required by Order No. 8028, the agency wishes to arrange a meeting to further discuss this matter. Please contact the onsite WVDEP EE Inspector within twenty-four (24) hours to arrange this meeting.

Sincerely,



Scott G. Mandirola, Director
Division of Water and Waste Management

Attachment

CC: Yogesh Patel, Asst. Director, DWWM-Permits (via e-mail)
Joseph M. Hickman, Asst. Chief Inspector (via e-mail)
Cynthia Musser, Env. Inspector Supervisor, EE - SW Region (via e-mail)
Shyrel Moellendick, EE (via e-mail)
John Benedict, Director, DAQ (via e-mail)



January 16, 2014

Scott Mandirola
Division of Water and Waste Management
601 57th Street Southeast
Charleston, West Virginia 25304

Re: Order No. 8028

Dear Mr. Mandirola:

This letter is a response to Order No. 8028 issued by the Division of Water and Waste Management on January 15, 2014. This Order required Freedom Industries, Inc. ("Freedom") to take certain actions and submit a plan of corrective action. This letter addresses certain deficiencies in the original response.

Investigation and Remediation of MCHM Release.

1. The methodology used to determine the loss of MCHM is mass balance based starting with the December closing inventory which was a fiscal inventory and reconciled to theoretical. Starting inventory on the 8th of January was 110,375 gallons. A reconciliation at this time to the current inventory at Poca will not be possible till we have completed analysis on the remaining water MCHM expected within the next two days.
2. Our aim is to minimize material liquid disposal, to that end we were planning on using air based separation on site if permitted at Poca to separate the water phase from the solvent phase removing the balance odor using activated carbon. We have discussed the possibility with DEP of using the waste water from this process as a



diluent for glycerin for on use in freeze conditioning coal. The balance MCHM once separated from any solid residues by filtration, can easily be blended with virgin material and consumed within the mining process. Solids from the resulting filtration and saturated absorbent located at the Freedom river plant have yet to be measured for solvent content and characterized for disposal.

3. Plans were discussed and agreed at the command meeting this morning to extend the collection area as close to the far corner of the containment dike below tank 393 due to a buried gas line. This work will be started as soon as the soil dries enough to move heavy excavation equipment without a safety risk to operators. Ahead of this, the slope immediately in front of the dike leading to the new containment area, has undergone vacuum treatment today removing as much surface liquid as is possible. The cleaned surface is being treated with bentonite clay as a leveling agent and covered with 10 mil poly and rip rap for security from the dike wall to the new extended containment area. In addition we are adding a trench from the boat dock to the low point of the containment area. The trench approximately two feet deep will contain a French drain pipe capped at both ends containing two vacuum points to apply suction to remove any material which moves by hydraulic conductivity. The pipe will be covered by filter fabric and washed #57 gravel. This plan provides a contingency should we see any seepage from the liner in the containment area.
4. Freedom has not yet established a written protocol for 24 hour surveillance. Night personnel have been walking the illuminated dike every two to two and a half hours logging inspections on a sheet. We are exploring the installation of video surveillance cameras throughout the tank farm which can be viewed from the office manned 24 hours a day, and additionally from the Internet.

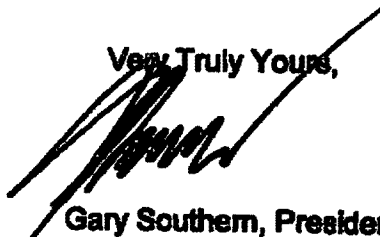


5. Double walled Baker frac tanks are on order as discussed and agreed in the command meeting this morning. The first three tanks will begin arriving the evening of 1-16. We estimate the balance of the tanks will arrive over the next three days. Transfer to the first three will be completed 48 hours from installation of the tanks anticipated to take one day. We feel very confident the balance of the tanks will be filled by the 23rd. The tanks have 24 hour armed surveillance today and like the river terminal we are planning remote camera surveillance.
6. We observed one roll off container yesterday that had a teaspoon size amount of material leak onto the ground. It was not clear if the leak point source was the roll off or a double bagged boom that leaked on its way to the box. In the presence of DEP last night 1-15 the box was emptied, lined and the double bagged materials were replaced.
7. Copies of all of the tank inspection reports are attached and Freedom has located and started moving the first 200,000 gallons of glycerin out of the tanks. We are close on an agreement to relocate the calcium chloride and movement will begin as soon as agreement is reached. Regular scheduled deliveries to customers.



8. Freedom is in the process of selecting and interviewing environmental engineering contractors to develop a site remediation plan. It must be noted that this process will be further complicated by the involvement of Shell, successor to Pennzoil given that petroleum residues and odors were discovered in the bore holes and on some of the surface water.

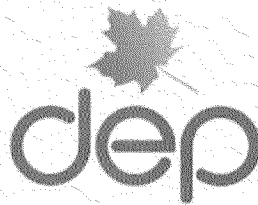
Very Truly Yours,



Gary Southern, President
Freedom Industries, Inc.

cc WV DEP Environmental Inspector Supervisor
Southwest Regional Environmental Enforcement Office
Chief Inspector, Environmental Enforcement

Freedom Industries, Inc. • P.O. Box 713 • Charleston, WV 25323 • (304) 720-8085



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0495
Fax: (304) 926-0463

Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
www.dep.wv.gov

**ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11
AND THE
GROUNDWATER PROTECTION ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 12**

TO: Freedom Industries, Inc.
Attn: Gary Southern, President
P.O. Box 713
Charleston, WV 25323

DATE: January 22, 2014

ORDER NO.: 8033

INTRODUCTION

The following findings are made and Order issued to Freedom Industries, Inc. pursuant to the authority vested in the Director of the Division of Water and Waste Management under Chapter 22, Article 11, Section 1 et seq. and Chapter 22, Article 12, Section 1 et seq. of the Code of West Virginia.

FINDINGS OF FACT

In support of this Order, the Director hereby finds the following:

1. Freedom Industries, Inc. operates a bulk storage distribution center located near Charleston, Kanawha County, West Virginia. The site was formerly operated by Ettowah River Terminal, LLC under WV/NPDES General Water Pollution Control Permit No. WV0111457, Registration No. WVG610920.
2. Freedom Industries, Inc. purchased the facility from Ettowah River Terminal, LLC on December 9, 2013.
3. On January 9, 2014, West Virginia Department of Environmental Protection (WVDEP) personnel received a complaint concerning an odor at / near the Freedom Industries, Inc. site. After investigation, the following was observed and documented:

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- a. Free product was observed in secondary containment units surrounding above ground storage tanks containing a chemical described as 4-Methylcyclohexene Methanol (MCHM). It was also observed that this material had escaped the secondary containment unit and had entered the Elk River. Failure to maintain adequate secondary containment for above ground storage tanks is a violation of 47 CSR 58, Section 4.8.a.
 - b. It was determined that the intake for the local public water supply is located approximately 1.5 miles downstream of the discharge, and has been impacted.
 - c. The release of this spilled material has caused conditions not allowable in the Elk River by creating odors in the vicinity of state waters, by requiring an unreasonable degree of treatment for the production of potable water, and by creating a sheen on the surface of the water, a violation of 47 CSR 2, Section 3.
 - d. Freedom Industries, Inc. has failed to take any and all measures necessary to contain the spill and render it harmless, a violation of 47 CSR 11, Section 2.5.
4. At 12:05 p.m. on January 9, 2014, Bob Reynolds with Freedom Industries, Inc. reported the spill to the Emergency Response Spill Hotline. Mr. Reynolds indicated that the facility discovered a hole in the tank; as well as, the secondary containment unit was containing the spilled material.
 5. On January 21, 2014, Freedom Industries, Inc. provided information to WVDEP indicating that additional materials were present in the January 9, 2014 release to the Elk River. These materials were not included in the initial information regarding the composition of the spilled materials. Failure to accurately report "the type or types and quantity or quantities of the material or materials therein" is a violation of 47 CSR 11, Section 2.2.b.

ORDER FOR COMPLIANCE

And now, this day of January 22, 2014, Freedom Industries, Inc. is hereby ORDERED by the Director as follows:

1. Freedom Industries, Inc. shall immediately take measures to initiate compliance with all pertinent laws and rules.
2. All requirements of Order No. 8027 remain in full force and effect.
3. All requirements of Order No. 8028, as amended on January 14, 2014, remain in full force and effect.
4. By 4:00 pm on January 22, 2014, Freedom Industries, Inc. shall provide any and all information fully describing the composition of the materials spilled to the Elk River on January 9, 2014. This information shall be submitted to the onsite WVDEP Inspector.

A copy of this information shall be submitted to:

WVDEP Environmental Inspector Supervisor

**SW Regional Environmental Enforcement Office
PO Box 662
Teays, WV 25569**

A copy of this information shall also be submitted to:

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WVDEP
601 57th Street SE
Charleston, WV 25304**

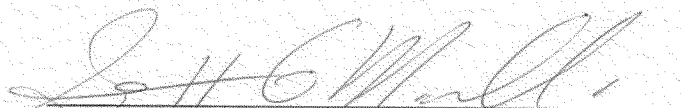
OTHER PROVISIONS

1. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving Freedom Industries, Inc. of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject Freedom Industries, Inc. to additional enforcement action in accordance with the applicable law.
2. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
3. This Order is binding on Freedom Industries, Inc., its successors and assigns.
4. This Order shall terminate upon Freedom Industries, Inc.'s notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

RIGHT OF APPEAL

Notice is hereby given of your right to appeal the terms and conditions of this Order which you are aggrieved to the Environmental Quality Board by filing a NOTICE of APPEAL on the form prescribed by such Board, in accordance with the provisions of Chapter 22, Article 11, Section 21 and/or Chapter 22, Article 12, Section 11 of the Code of West Virginia within thirty (30) days after receipt of this Order.

This Order shall become effective upon receipt.


Scott G. Mandirola, Director
Division of Water and Waste Management

revised March 2013